SRI MAJU SARATA EKSPRES SDN BHD
v. SEGAR MUNUSAMY & ORS

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
COLLIN LAWRENCE SEQUERAH JCA
FAIZAH JAMALUDIN JCA
[CIVIL APPEAL NO: A-04(W)-295-07-2024]
7 OCTOBER 2025

Abstract – *(i) The scheme of the Employment Act 1955 ('EA') as a whole is engineered with the view that the rights of the disadvantaged or weaker party in mind, meaning the employees, are to prevail over the economic might, strength and resources of the employer; (ii) The power conferred on the Labour Office in deciding disputes between an employer and an employee in respect of wages and any terms of contract must also include the power and jurisdiction to pierce the corporate veil in order to determine in respect of the wages due, who is the real employer; (iii) While a literal definition of the phrase 'wages' in s. 2 of the EA provides that it is meant for work done in respect of his contract of service, there is evidence that the basic salary of the employees is a fixed component of their remuneration and this is not subject to reductions, especially taking into account circumstances, in this case, the movement control order caused by the COVID-19 pandemic, where harsh realities had befallen on the employees. The employees are entitled to the outstanding balance of their basic wages for the said period. Even if they had engaged in part time work elsewhere during the period of the claims, the final award due to the employees ought not to be reduced.*

LABOUR LAW: *Employment – Wages – Claim for balance of wages due and owing – Whether employees had voluntarily signed consent letters agreeing to wage reductions – Whether employer's action in implementing wage reductions lawful or justified – Whether employees entitled to outstanding balance of basic wages – Whether part-time employment undertaken by employees taken into account in determining quantum of final award – Employment Act 1955, ss. 24 & 69*

LABOUR LAW: *Employment – Wages – Claim for balance of wages due and owing – Whether employees employed by other entities – Whether fit and proper case for lifting of corporate veil – Whether Labour Office acted within spirit and jurisprudential ambit of Employment Act 1955*

WORDS & PHRASES: *'wages' – Employment Act 1955 s. 2 – Definition – Whether meant for work done in contract of service – Whether basic salary fixed component of employees' remuneration – Whether subject to deductions – Whether employees entitled to outstanding balance of basic wages*

This was the appellant's appeal against the decision of the High Court which upheld the Labour Office's decision. The respondents, employed as bus drivers, had claimed from the appellant for balance wages due and owing to them from the period of July 2020 until February 2021. The claim was brought at the Labour Office pursuant to s. 69 of the Employment Act 1955 ('EA'). The Labour Office allowed the respondents' claims. On appeal, the High Court dismissed the appellant's appeal. Hence, this appeal. The appellants claimed that, *inter alia,* (i) a major portion of the respondents were employed by other entities that were distinct and separate legal entities in law from the appellant, but these entities were not cited as parties in this action. The appellant argued that each respondent ought to have initiated claims against the specific company with which they individually contracted; (ii) the High Court Judge had failed to consider that there were no fraudulent, dishonest or unlawful purposes on the part of the appellant when he decided to pierce the corporate veil; and (iii) the respondents had fully understood the content of the consent letters they signed where they had voluntarily agreed to wage deductions. The respondents, on the other hand, submitted that, *inter alia,* (i) the appellant and the other companies were part of the same corporate group, sharing common ownership and operated as a single unit, thus this was a proper case for the lifting or piercing of the corporate veil; (ii) irrespective of the operational restrictions during the MCO, the basic salary of the respondents was a fixed component of their remuneration and this was not subject to reductions dependent upon trips undertaken; (iii) the respondents did not fully understand the content of the consent letters and claimed that they were coerced into signing with threats of not receiving their wages; and (iv) they should be entitled to their full salary from the appellant. The issues that arose for determination were (i) whether the appellant was a proper party for the action to be brought against and whether there was a cause for the lifting of the corporate veil; (ii) what was the correct definition of 'wages' in the circumstances of this case and did the subsidy programme by SOCSO have the effect of prevailing over s. 2 of the EA; (iii) what was the effect of the letters of consent signed by the respondents; and (iv) whether the part-time employment undertaken by some of the respondents ought to be taken into account in determining the quantum of the final award.

Held (dismissing appeal)

Per Collin Lawrence Sequerah JCA delivering the judgment of the court:

(1a) The evidence indicated that the appellant and the other entities were managed under a unified leadership and operated with a cohesive management structure. The appellant's logo was on the uniforms of the employees and vehicles. The payslips issued to the employees were by the appellant, notwithstanding that some of them were employees of other companies within the group. The prevailing circumstances strengthened the perception that the employees were in fact working

for a single employer. These companies functioned as a single integrated unit and thus had blurred the lines between the formal legal separation of the entities. They operated as a single and unified entity with shared resources, branding and administration including a common payroll system. The respondents successfully discharged the burden of proof in showing that all these companies in fact operated as a single economic unit and entity. This was therefore a fit and proper case for the lifting of the corporate veil in the circumstances with the result that the appellant was properly treated as the employer of all 36 respondents. (paras 19-25)

(1b) While it was not in dispute that the Labour Office was not a court, it was nevertheless statutorily charged with the responsibility of deciding disputes between an employer and employee in respect of wages and other payments in cash due as well as any terms of contract between an employer and employee. The power conferred on the Labour Office in order to decide such matters must also include the power and jurisdiction to pierce the corporate veil in order to determine in respect of any wages due, who was the real employer. The Labour Office acted within the spirit and jurisprudential ambit of the EA and had therefore not exceeded its jurisdiction when it lifted or pierced the corporate veil in order to reveal the true identity of the employer. (paras 29-35)

(2) While a literal definition of the phrase 'wages' in s. 2 of the EA provides that it is meant for work done in respect of his contract of service, there was evidence that the basic salary of the respondents was a fixed component of their remuneration and this was not subject to reductions dependent upon trips undertaken. The MCO period caused by the Covid pandemic was unprecedented in modern history. Harsh realities had befallen on the respondents and their families by extension, during that period. The respondents were, under the circumstances, entitled to their outstanding balance of their basic wages for the MCO period amounting to RM600 per month, in addition to the sum of RM600 already made under the 'Program Subsidi Upah' ('PSU') subsidy. (paras 43-50)

(3) Although there was evidence that the contents and implications of the consent letters were explained to all the respondents, there was other evidence to indicate that several respondents signed the letters under the impression that failure to sign would result in them not receiving their wages. This had raised significant concerns regarding the voluntariness of their consent, especially in regards to the testimony that some respondents had felt compelled to sign due to fear of non-payment of their wages. The preponderance of evidence tended to negate that the respondents had signed voluntarily and with consent.

A While s. 24 of the EA permits certain deductions, none of these, seeing as they were made during the Covid crisis and ensuing MCO and thus unprecedented, fell into the permissible categories. Thus, the appellant's action in implementing the wage reductions were not lawful nor justified. (paras 54-60)

B **(4)** The respondents had engaged in part-time work during the period of the claims. The respondents submitted that there was implicit consent by the appellant and they cited the absence of disciplinary action or objection on the part of the appellant. The claim by the appellant was to factor or take into account such payments for employment C elsewhere must necessarily involve deductions from the lawful salary due to the respondents. Here, s. 24 of the EA proves to be an obstacle to the appellant simply because such deductions are not authorised by the Act. The final award due to the respondents ought not to be reduced by reason of them engaging in part-time employment D elsewhere. (paras 61-67)

Case(s) referred to:

Austral Amalgamated Tin Bhd v. Abdul Wahab Kopon & Ors & Another Appeal [2004] 2 CLJ 316 CA ***(refd)***

Hotel Jaya Puri Bhd v. National Union Of Hotel, Bar & Restaurant Workers & Anor [1979] CLJU 32; [1979] 1 LNS 32 HC ***(refd)*** E

National Union Of Hotel, Bar & Restaurant Workers Peninsular Malaysia & Anor v. Mahsyur Mutiara Sdn Bhd (Sheraton Langkawi Beach Resort) [2018] 1 CLJ 318 CA ***(refd)***

Ong Leong Chiou & Anor v. Keller (M) Sdn Bhd & Ors [2021] 4 CLJ 821 FC ***(refd)***

Poosai Pandian Gunasekaran & Ors v. AJN Energy (M) Sdn Bhd [2023] 2 ILR 23 CA ***(refd)*** F

Salomon v. A Salomon & Co Ltd [1897] AC 22 ***(refd)***

Legislation referred to:

Employment Act 1955, ss. 2, 7A, 24, 69

For the appellant - Skanda Yagasena, Robin Lim Fang Say & Chan Kai Min; M/s Chan & Assocs G

For the respondent - Logaprieyan Arichandran, T Ellanggovan Thambiraju & Babu Raj Raja Gopal; M/s Ellan & Co

[Editor's note: Appeal from High Court, Ipoh; Civil Appeal No: AA-16-16-09-2023 (affirmed).]

H *Reported by Suhainah Wahiduddin*

JUDGMENT

Collin Lawrence Sequerah JCA:

I **Introduction**

[1] The respondents claimed from the appellant for balance wages due and owing to them from the period July 2020 until February 2021. The claim was brought at the Labour Office pursuant to s. 69 of the Employment Act 1955.

[2] The Labour Office allowed the respondent's claims. On appeal, the High Court dismissed the appellant's appeal.

[3] This is the appeal before us against the decision of the High Court dated 29 February 2024 which upheld the Labour Office's decision dated 2 August 2023.

Parties' Submissions

[4] The respective submissions of parties can be neatly and succinctly summarised as follows:

(i) the appellant

(a) a major portion of the respondents were actually employed by entities known as Aneka Jasaramai Ekspres Sdn Bhd ("Aneka"), Syarikat Pengangkutan Azra Sdn Bhd ("Azra") and Syarikat Germuda Perak Sdn Bhd ("Germuda") but these entities were not cited as parties in this action;

(b) these companies were all distinct and separate legal entities in law from the appellant;

(c) the High Court Judge had failed to consider that there were no fraudulent, dishonest or unlawful purposes on the part of Sri Maju when he decided to pierce the corporate veil;

(d) the learned High Court Judge had also failed to appreciate that the Labour Office had no civil jurisdiction in piercing the corporate veil;

(e) the High Court Judge misapprehended the definition of "wages" defined in s. 2 of the Employment Act 1955;

(f) the High Court Judge in particular failed to construe that "wages" are compensatory payments for work performed under the terms of employment;

(g) the High Court Judge had also failed to take into account the subsidy programme by SOCSO when making the award for the payment of wages;

(h) the respondents had fully understood the content of the consent letters they signed where they had voluntarily agreed to wage deductions and signed consent letters for the periods from 1 July 2020 to 31 October 2020 and from 1 November 2020 to 31 January 2021;

(i) the High Court Judge failed to appreciate that lack of comprehension of the respondents with regard to the signing of the consent letters is not a legal defence; and

(j) the High Court Judge failed to appreciate that the parties may formalise an arrangement by way of an agreement;

(ii) the respondents

(a) the respondents submitted that Sri Maju Sarata Ekspress Sdn Bhd ("Sri Maju") the appellant, Aneka Jasaramai Ekspres Sdn Bhd ("Aneka"), Syarikat Pengangkutan Azra Sdn Bhd ("Azra") and Syarikat Germuda Perak Sdn Bhd ("Germuda") were part of the same corporate group, sharing common ownership and operated as a single unit. Consequently, it was submitted that this was a proper case for the lifting or piercing of the corporate veil;

(b) the respondents in claiming entitlement to a basic salary of RM1,200 as specified in their contracts, submitted that irrespective of the operational restrictions during the MCO, the basic salary of the respondents was a fixed component of their remuneration and this was not subject to reductions dependent upon trips undertaken;

(c) this is notwithstanding the definition of "wages" in s. 2 of the Employment Act 1955. The respondents also submitted that the subsidy programme by SOCSO had the effect of prevailing over s. 2 of the Employment Act;

(d) the respondents contended that they did not fully understand the content of the consent letters they signed where they had voluntarily agreed to wage deductions and signed consent letters for the periods from 1 July 2020 to 31 October 2020 and from 1 November 2020 to 31 January 2021, in line with the company's decision due to financial difficulties during the pandemic while some of them claimed that they were coerced into signing with threats of not receiving their wages;

(e) the respondents submitted that the period during which some of them engaged in part time work, ought not to be considered or factored in when determining the final award as there was implicit consent by the appellant and the absence of disciplinary action or objection on the part of the appellant; and

(f) they argued consequently that they should nevertheless be entitled to their full salary from the appellant.

Analysis And Decision

[5] Upon an analysis of the factual matrix and a mature consideration of the submissions of parties, our considered view is that the outcome of this appeal is dependent on the resolution of the following issues:

(i) whether the appellant was a proper party for the action to be brought against and whether there is a cause for the lifting of the corporate veil;

(ii) what is the correct definition of "wages" in the circumstances of this case and does the subsidy programme by SOCSO have the effect of prevailing over s. 2 of the Employment Act;

(iii) what is the effect of the letters of consent signed by the respondents; and

(iv) whether the part-time employment undertaken by some of the respondents ought to be taken into account in determining the quantum of the final award.

Whether The Appellant Was A Proper Party For The Action To Be Brought Against And Whether There Is A Cause For The Lifting Of The Corporate Veil

[6] The appellant contends that not all the respondents are employees of the appellant.

[7] The appellant submitted that 25 out of the 36 respondents are employed as bus drivers of entities known as Sri Maju Sarata Ekspress Sdn Bhd ("Sri Maju"); the appellant, Aneka Jasaramai Ekspres Sdn Bhd ("Aneka"), Syarikat Pengangkutan Azra Sdn Bhd ("Azra") and Syarikat Germuda Perak Sdn Bhd ("Germuda") and that each has a separate legal entity of their own and that the respondents had signed individual employment contracts with these entities.

[8] The appellant argues that each respondent ought to have initiated claims against the specific company with which they individually contracted.

[9] The Labour Office however, had recognised that Sri Maju, Aneka, Azra, and Germuda are part of the same corporate group, sharing common ownership.

[10] While recognising the separate legal identities of these entities, the Labour Office also noted that the corporate veil might be lifted where the operational realities of the group warrant such an approach.

[11] In the final analysis, the Labour Office did see fit in the circumstances to lift the corporate veil and treat the group of companies as operating as a single integrated unit.

[12] The principle that a company is a separate legal entity from its shareholders and other companies, even within the same group, is as old as the hills, emanating from the seminal decision of the House of Lords in *Salomon v. A Salomon & Co Ltd* [1897] AC 22.

[13] However, over time, various exceptions to this rule have developed and have been recognised.

[14] In fact, within an employment law context, the issue of whether group companies can be treated as a single entity was considered in *Hotel Jaya Puri Bhd v. National Union Of Hotel, Bar & Restaurant Workers & Anor* [1979] CLJU 32; [1979] 1 LNS 32; [1980] 1 MLJ 109 where Salleh Abas FJ (as he then was) stated as follows:

A It is true that while the principle that a company is an entity separate from its shareholders and that a subsidiary and its parent or holding company are separate entities having separate existence is well established in company law, in recent years the court has, in a number of cases, by-passed this principle if not made an inroad into it. *The court seems quite willing to lift "the veil of incorporation" (so the expression goes) when the justice of*
B *the case so demands.* Thus the facts of the case may well justify the court to hold that despite separate existence a subsidiary company is an agent of the parent company or *vice versa* as was decided in *Smith, Stone and Knight v. Birmingham Corporation; Re F.G. (Films) Limited; and Firestone Tyre & Rubber Co. v. Llewelyn, Professor Gower in his Principles of Modern Company Law, 3rd Edition, Page 213, said that the courts "are coming to recognise the*
C *essential unity of a group enterprise rather than the separate legal entity of each company within the group.* Other examples of this can be found. In *The Roberta* (1937) 58 LJ.LR. 159, a parent company was held liable on a bill of lading signed on behalf of its wholly owned subsidiary, the court saying that the subsidiary was 'a separate entity ... in name alone and probably
D for the purposes of taxation'. In another case, *Spittle v. Thames Grit & Aggregates Ltd.* [1937] 4 All ER 101, the court found no difficulty in treating a subsidiary as 'to all intents and purposes' the same as the parent company which held 90 percent of its shares. *A licensing authority in exercise of its discretion has been held entitled to have regard to the fact that a parent and subsidiary company, though technically separate legal persons, in fact constituted a*
E *single commercial unit* (*Merchandise Transport Ltd. v. British Transport Commission* [1962] 2 QB 173, Devlin LJ. At page 202) ... A good example of this is *Bird & Co. v. Thos. Cook & Son* [1937] 2 All ER 227, in which an indorsement of a cheque to 'Thos. Cook & Son Ltd.' was treated as an indorsement to the allied but separate company of *Thos. Cook & Son (Bankers) Ltd*. Regarding it as a mere misdescription to be ignored under
F the principle *falsa demonstratio non nocet*.

It is clear therefore that the approach taken by the President of Industrial Court is not without any legal support when he placed an emphasis on the essential unity of group enterprise which in this case consists of the Hotel and the Restaurant, especially when Datuk N.A. Kularajah who is the Managing Director of the Hotel
G *was also the Managing Director and later a Director of the Restaurant and had the ultimate authority over the employees. Thus, the practice of treating the employees of the Restaurant as being separate from the employees of the Hotel such as the Union having been told that they were so, their salaries, their E.P.F. and SOCSO contributions being paid by the Restaurant, does not detract from the fact that the employees in question were in fact working in one group enterprise.* In my
H judgment, by giving recognition to this fact, the President did not cause any violence to the sanctity of the principle of separate entity established in *Salomon v. Salomon & Co.* but rather gave effect to the reality of the Hotel and the Restaurant as being in one enterprise. I find nothing unreasonable in the finding of the President by by-passing this principle.
(emphasis added)

I

[15] More recently, though in a different factual context, the Federal Court in *Ong Leong Chiou & Anor v. Keller (M) Sdn Bhd & Ors* [2021] 4 CLJ 821, held as follows:

> [1] The juristic principle comprising the bedrock of company law is the legal fiction that, on incorporation, the corporate entity is clothed with a separate and distinct personality. It is a legal person distinct from its members (*Salomon v. A Salomon & Co Ltd* [1897] AC 22 ('*Salomon v. Salomon*'). There subsists a 'veil' between the company and its members that separates them for purposes of liability, property, capacity, and in relation to acts done or the acquisition of rights. The natural persons who are the incorporators are ignored.
>
> [2] *However, the veil of incorporation is not entirely inviolable. One of the well-recognised and accepted exceptions to the principle of the separate personality of a company is where the legal entity of a corporate body is utilised for fraudulent, dishonest or unlawful purposes. Those seeds of limitation were set out in the locus classicus of Salomon v. Salomon (above) itself by Lord Davey*:
>
> > If ... the company was formed for an unlawful purpose, or in order to achieve an object not permitted by the provisions of the [Companies] Act, the appropriate remedy (if any) would seem to be to set aside the certificate of incorporation, or to treat the company as a nullity, or, if the appellant has committed a fraud or misdemeanour ... he may be proceeded against civilly or criminally ...
> >
> > *In such circumstances, the person or persons perpetrating such abuse cannot hide behind the separate corporate personality. The courts will "break" the shell of incorporation, by utilising the doctrine of the "lifting or piercing of the corporate veil". Our law journals are replete with case law on this subject.* (emphasis added)

[16] That case has shown that the corporate veil may be lifted where it is shown that the company is being used as a façade to conceal true facts, commit fraud, or evade legal obligations. The burden of proof rests on the party seeking to lift the veil to demonstrate clear evidence of such improper use.

[17] The question therefore arises as to whether Sri Maju, Aneka, Azra, and Germuda, despite being separate legal entities, should be treated as a single employer under the banner of Sri Maju for the purposes of this legal action.

[18] The appellant argues that there is no statutory or common law basis to deviate from the principle of separate legal entities. They assert that each respondent's employer is clearly defined in their respective contracts, and payments made by other group companies were merely done for administrative convenience and does not alter the contractual relationships.

[19] The stark realities however painted a very different picture. The evidence indicated that Sri Maju, Aneka, Azra, and Germuda were managed under a unified leadership and operate with a cohesive management structure. The Sri Maju logo was on the uniforms of the employees and vehicles.

[20] The pay slips issued to the employees were by Sri Maju notwithstanding that some of them were employees of other companies within the group.

[21] The prevailing circumstances alluded to above strengthened the perception that the employees were in fact working for a single employer.

[22] It showed that these companies functioned as a single integrated unit and thus had blurred the lines between the formal legal separation of the entities.

[23] The sum total of the evidence and the circumstances showed that Sri Maju, Aneka, Azra and Germuda operated as a single and unified entity with shared resources, branding and administration including a common payroll system.

[24] We therefore agree with the finding of the learned High Court Judge ("HCJ") that the respondents have successfully discharged the burden of proof in showing that all these companies in fact operated as a single economic unit and entity.

[25] This was therefore a fit and proper case for the lifting of the corporate veil in the circumstances with the result that Sri Maju was properly treated as the employer of all 36 respondents.

[26] The appellant also submitted that the Labour Office, not being a civil court but a tribunal, had no jurisdiction to lift the corporate veil.

[27] The appellant cited the case of *Austral Amalgamated Tin Bhd v. Abdul Wahab Kopon & Ors & Another Appeal* [2004] 2 CLJ 316 in support which held that the Labour Office is not a court and that the inquiry pursuant to s. 69 of the Employment Act 1955 does not amount to judicial proceedings.

[28] The jurisdiction of the Labour Office is set out in s. 69 of the Employment Act 1955 which reads:

> *69. Director General's power to inquire into complaints.*
>
> *(1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under:*
>
> a) *any term of the contract of service between such employee and his employer;*
>
> b) any of the provisions of this Act or any subsidiary legislation made thereunder; or

> c) the provisions of the Wages Councils Act 1947 [Act 195] or any order made thereunder, and in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount thereof. (emphasis added)

[29] While it is not in dispute that the Labour Office is not a court, it is nevertheless statutorily charged with the responsibility of deciding disputes between an employer and employee in respect of wages and other payments in cash due as well as any terms of contract between an employer and employee.

[30] It is our considered view that the power conferred on the Labour Office in order to decide such matters must also include the power and jurisdiction to pierce the corporate veil in order to determine in respect of any wages due, who is the real employer.

[31] It is also mandated by the said section that the Labour Office in exercising the powers under s. 69, that "in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just".

[32] The phrase "as he deems just" is wide enough to confer a discretion upon the Labour Office to decide in respect of wages, who is the true employer.

[33] Further, in *Poosai Pandian Gunasekaran & Ors v. AJN Energy (M) Sdn Bhd* [2023] 2 ILR 23; [2023] 3 MLRA 353, it was stated that:

> The EA is a social legislation and must therefore be interpreted liberally and equitably in favour of the weaker party who are the poor and likely illiterate Appellants here.

[34] This is not in any manner designed to demean or to relegate the respondents to the class of poor or illiterate workmen, which I am sure they are not, but rather to emphasise the fact that the scheme of the Employment Act as a whole was engineered with view that the rights of the disadvantaged or weaker party in mind, meaning the employees, are to prevail over the economic might, strength and resources of the employer.

[35] It is our considered view therefore that the Labour Office acted within the spirit and jurisprudential ambit of the Employment Act and had therefore not exceed its jurisdiction when it lifted or pierced the corporate veil in order to reveal the true identity of the employer.

What Is The Correct Definition Of "Wages" In The Circumstances Of This Case And Does The Subsidy Programme By SOCSO Have The Effect Of Prevailing Over s. 2 Of The Employment Act

[36] This issue revolves around the entitlement of the respondents to receive their full basic wages during the movement control orders ("MCO") period, despite the suspension of their usual bus operations due to COVID-19 pandemic restrictions.

[37] The appellant submitted that wages should be paid based on work performed which is based on completed trips and supplemented by a seniority allowance. Since bus services were halted during the MCO, the appellant argues that the respondents are not entitled to the full wages stipulated in their contracts.

[38] The appellant in support of their contention, relied upon s. 2 of the Employment Act 1955 and the principle established in the case of *National Union Of Hotel, Bar & Restaurant Workers Peninsular Malaysia & Anor v. Mahsyur Mutiara Sdn Bhd (Sheraton Langkawi Beach Resort)* [2018] 1 CLJ 318; [2017] 6 MLJ 265, that wages are payments made for work performed under the employment contract.

[39] The definition of "wages" in s. 2 of the Employment Act is defined as follows:

> **Means basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service** but does not include:
>
> a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;
>
> b) any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme or any other fund or scheme established for the benefit or welfare of the employee;
>
> c) any travelling allowance or the value of any travelling concession;
>
> d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;
>
> e) any gratuity payable on discharge or retirement; or
>
> f) any annual bonus or any part of any annual bonus.
>
> (emphasis added)

[40] The appellant argues therefore that no work performed means no wages are due and this accords with their payment structure, which is based on trip completion and seniority, and not a fixed salary.

[41] The appellant further contends that the 'basic rate' on payslips generated by payroll software does not represent a fixed salary but is instead composed of trip allowances and a seniority allowance.

[42] The respondents on the other hand, claimed for their entitlement to a basic salary of RM1,200 as specified in their contracts, irrespective of the operational restrictions during the MCO.

[43] While a literal definition of the phrase "wages" in s. 2 of the Employment Act provides that it is meant for work done in respect of his contract of service, there was evidence that the basic salary of the respondents was a fixed component of their remuneration and this was not subject to reductions dependent upon trips undertaken.

[44] The MCO period caused by the COVID-19 pandemic was unprecedented in modern history. The arguments advanced by the appellant ignored the harsh realities that had befallen on the respondents and their families by extension, during that period.

[45] There was also evidence that emanated from the trial that a witness of the appellant had agreed that there was a contradiction that arose in the course of proceedings and confirmed that in actual fact, the appellant had continued to operate during the time period of the respondents claim. The benefit of this contradiction ought to be resolved in favour of the respondents.

[46] The appellant further argued that during the MCO, the appellant received the 'Program Subsidi Upah' ("PSU") from SOCSO and disbursed RM600 monthly to the respondents, reflecting good faith on their part in an effort to alleviate the impact of the operational standstill without resorting to retrenchments.

[47] The respondents reply to this was to refer to a circular issued by SOCSO.

[48] This, in 'Bahasa Malaysia' is the "Pekeliling Majikan Bil. 5 tahun 2020 (PKS/SI P/208/275/30(54)", cl. 3.7 which reads:

> Klausa 3.7
>
> 3.7. Majikan yang menerima bantuan Program Subsidi Upah disyaratkan tidak boleh membuang pekerja yang berpendapatan RM4,000 sebulan dan ke bawah, tidak boleh memotong gaji dan mengarahkan pekerja mengambil cuti tanpa gaji dalam tempoh 3 bulan semasa menerima bayaran subsidi upah dan untuk 3 bulan selepas itu.

[49] Roughly translated, it means that upon receipt of the PSU subsidy from SOCSO, the employer may not terminate the employment of a worker earning RM4,000 per month or less and may not also cause a reduction in salary and order the employee to take leave without pay within a period of three months while receiving the subsidy and for three months after that.

[50] In all the circumstances, we therefore agree with the finding made by the HCJ that the respondents were under the circumstances, entitled to their outstanding balance of their basic wages for the MCO period amounting to RM600 per month, in addition to the sum of RM600 already made under the PSU subsidy.

A *What Is The Effect Of The Letters Of Consent Signed By The Respondents*

[51] The appellant contends that the respondents had voluntarily agreed to wage deductions and signed consent letters for the periods from 1 July 2020 to 31 October 2020 and from 1 November 2020 to 31 January 2021, in line with the company's decision due to financial difficulties during the
B pandemic.

[52] The issue to be determined here is whether the consent letters signed by the respondents relating to wage deductions implemented by the appellant during the pandemic period were valid and enforceable.

C **[53]** The respondents contended that they did not fully understand the content of the consent letters when they signed them, while some claimed that they were coerced into signing with threats of not receiving their wages.

[54] Although there was evidence that the contents and implications of the consent letters were explained to all of the respondents, there was other
D evidence to indicate that several respondents signed the letters under the impression that their failure to sign would result in them not receiving their wages.

[55] The HCJ had found that this had raised significant concerns regarding the voluntariness of their consent especially in regard to the testimony that
E some respondents had felt compelled to sign due to fear of non-payment of their wages.

[56] To compound matters for the appellant, deductions were made in respect of two respondents although they had not signed the consent letter. This further raises considerable doubt as to the validity of the consent letters.
F

[57] We find ourselves in agreement with the findings of the HCJ in this respect and the preponderance of evidence tended to negate that the respondents had signed voluntarily and with consent.

G **[58]** While s. 24 of the Employment Act 1955 permits certain deductions, none of these, seeing as they were made during the Covid crisis and ensuing MCO and thus unprecedented, fell into the permissible categories.

[59] Yet another obstacle standing in the path of the appellant is that of s. 7A of the Employment Act 1955 which permits alteration of a condition
H of service or a term more favourable to an employee with the agreement of the employee, but not one which is less favourable.

[60] Upon a consideration of all the circumstances alluded above, we therefore agree with the finding of the HCJ that the appellant's action in implementing the wage reductions were not lawful nor justified.

I

Whether The Part-Time Employment Undertaken By Some Of The Respondents Ought To Be Taken Into Account In Determining The Quantum Of The Final Award

[61] The appellant argues that the respondents who engaged in part-time work during the period of the claims did so without obtaining prior permission of the appellant.

[62] It was thus contended by the appellants that this period during which some of the respondents who engaged in part-time work, ought to be considered or factored in when determining the final award.

[63] The respondents on the other hand, submitted that there was implicit consent by the appellant and they cited the absence of disciplinary action or objection on the part of the appellant.

[64] They argue consequently that they should nevertheless be entitled to their full salary from the appellant.

[65] The claim by the appellant to factor or to take into account such payments for employment elsewhere must necessarily involve deductions from the lawful salary due to the respondents.

[66] Here again, s. 24 of the Employment Act 1955 proves to be an obstacle to the appellant simply because such deductions are not authorised by the Act.

[67] In the circumstances, we agree with the finding of the HCJ that the final award due to the respondents ought not to be reduced by reason of them engaging in part-time employment elsewhere.

Decision

[68] In the premises and for the reasons stated above, we unanimously dismiss the appeal and order that the appellant pay costs of RM20,000 subject to allocator.